

# **DECISION DOCUMENT**

Concerning

***NATIONAL MARINE FISHERIES SERVICE  
BIOLOGICAL OPINION AND MAGNUSON-STEVENS FISHERY  
CONSERVATION AND MANAGEMENT ACT CONSULTATION***

*Consultation for the Operations and Maintenance of 12 U.S. Bureau of  
Reclamation Projects in the Upper Snake River Basin above Brownlee  
Reservoir – March 2005*

**U.S. Bureau of Reclamation**  
*Pacific Northwest Region  
Snake River Area*

**May 4, 2005**

## **INTRODUCTION**

Reclamation initiated formal consultation with the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act (ESA) regarding 12 separate Federal actions that occur in the Snake River basin upstream from Brownlee Reservoir. It also requested that NMFS recommend conservation measures to offset potential adverse effects to essential fish habitat (EFH) pursuant to Section 305(b)(4)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) as amended by the Sustainable Fisheries Act of 1996. Reclamation submitted a Biological Assessment to NMFS on November 30, 2004. Reclamation amended the Biological Assessment in March 2005 to add another proposed action.

Reclamation received a Biological Opinion and Incidental Take Statement from NMFS on March 31, 2005. The Opinion contains NMFS's determinations with respect to 12 listed and 1 proposed-for-listing salmon and steelhead evolutionarily significant units (ESUs) and its findings relative to the MSA with respect to effects to EFH.

The Section 7 ESA implementing regulations at 50 CFR § 402.15(a) state that "following the issuance of a biological opinion, the Federal agency shall determine whether and in what manner to proceed with the action in light of its Section 7 obligations and the Service's biological opinion." The MSA requires the Federal agency to provide a written response concerning EFH conservation recommendations within 30 days of receipt (50 CFR 600.920(k)). This Decision Document constitutes Reclamation's written notification to NMFS pursuant to the MSA requirements as well as documenting Reclamation's determination regarding how it will proceed with respect to its Section 7 ESA obligations.

Reclamation, pursuant to its statutory obligations under Section 7 of the ESA and Section 305 (b) of the MSA, is issuing this Decision Document to concur with conclusions and commit to carrying out the activities identified in NMFS's March 2005 Biological Opinion and Incidental Take Statement. This document describes Reclamation's approach to addressing the Incidental Take Statement requirements, including Reasonable and Prudent Measures and Terms and Conditions, set forth in Section 10 of the Biological Opinion and EFH Conservation Recommendations in Section 11.6.

## **BACKGROUND**

Reclamation reinitiated Section 7 ESA consultation with NMFS on its upper Snake River basin projects because the existing Biological Opinion and Incidental Take Statement issued on May 2, 2001, expired on March 31, 2005, and some components of the proposed actions differed from the actions consulted upon in the previous consultation.<sup>1</sup> This consultation addressed potential effects to the following ESA-listed ESUs:

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<sup>1</sup> On January 24, 2002, NMFS issued a Supplemental Biological Opinion that extended the termination date of the May 2, 2001, Biological Opinion to March 31, 2005.

Snake River spring/summer Chinook salmon  
Snake River fall Chinook salmon  
Snake River sockeye salmon  
Snake River Basin steelhead  
Columbia River chum salmon  
Upper Columbia River spring Chinook salmon  
Upper Columbia River steelhead  
Middle Columbia River steelhead  
Lower Columbia River steelhead  
Lower Columbia River Chinook salmon  
Upper Willamette River Chinook salmon  
Upper Willamette River steelhead  
Lower Columbia River coho salmon (proposed)

The consultation also considered the proposed actions' effects to designated critical habitat for Snake River spring/summer Chinook salmon, Snake River sockeye salmon, and Snake River fall Chinook salmon. Reclamation also consulted under the MSA and considered potential adverse effects to EFH.

### **Summary of the Proposed Actions**

Reclamation will undertake 12 separate Federal actions involving 12 Federal projects located in the Snake River basin upstream from Brownlee Reservoir. Table 1 lists the Federal projects and major storage and diversion facilities associated with each project and included in the proposed actions. As a matter of administrative convenience, Reclamation addressed all of the proposed actions in a single biological assessment. In turn, Reclamation requested that NMFS, as permitted by 50 CFR § 402.14(c), enter into a single consultation and issue a single biological opinion regarding all 12 proposed actions.

The proposed actions address operations and routine maintenance (O&M) at features and facilities at the 12 Federal projects over the next 30 years. Reclamation does not coordinate operation among all 12 projects, but rather operates divisions, projects, or groups of projects independently of each other. The proposed actions generally encompass:

- Storage and release of water from Federal reservoirs and dams
- Diversion of water at Reclamation facilities
- Power generation at Reclamation hydropower plants
- Routine maintenance at Reclamation project facilities
- Acquisition and provision of salmon flow augmentation water

**Table 1. Federal Projects and Associated Storage and Diversion Facilities included in the Proposed Actions.**

<b>Project</b>	<b>Storage Facilities</b>	<b>Major Diversion Facilities</b>
MINIDOKA	Jackson Lake Dam and Lake Grassy Lake Dam and Reservoir Island Park Dam and Reservoir American Falls Dam and Reservoir Minidoka Dam and Lake Walcott	Cascade Creek Diversion Dam Minidoka Northside Headworks Minidoka Southside Headworks Unit A Pumping Plant Milner-Gooding Canal Headworks
PALISADES	Palisades Dam and Reservoir	
RIRIE	Ririe Dam and Reservoir	
MICHAUD FLATS		Falls Irrigation Pumping Plant
LITTLE WOOD RIVER	Little Wood River Dam and Reservoir	
OWYHEE	Owyhee Dam and Reservoir	Tunnel No. 1 Dead Ox Pumping Plant Ontario-Nyssa Pumping Plant Gem Pumping Plant #1 and #2
BOISE	Anderson Ranch Dam and Reservoir Arrowrock Dam and Reservoir Deer Flat Dams and Lake Lowell Deadwood Dam and Reservoir Cascade Dam and Lake Cascade	Boise River Diversion Black Canyon Diversion
LUCKY PEAK	Lucky Peak Dam and Reservoir	
VALE	Warms Springs Dam and Reservoir Agency Valley Dam and Beulah Reservoir Bully Creek Dam and Reservoir	Harper Diversion Dam Bully Creek Diversion Dam
MANN CREEK	Mann Creek Dam and Reservoir	Mann Creek Dam Outlet
BURNT RIVER	Unity Dam and Reservoir	
BAKER	Mason Dam and Phillips Lake Thief Valley Dam and Reservoir	Savely Dam and Lilley Pumping Plant

Specifically the proposed actions consulted upon include:

- Future O&M in the Snake River system above Milner Dam (Michaud Flats, Minidoka, Palisades, and Ririe Projects).
- Future operations in the Little Wood River system (Little Wood River Project).
- Future O&M in the Owyhee River system (Owyhee Project).
- Future O&M in the Boise River system (Arrowrock Division of the Boise Project and the Lucky Peak Project).
- Future O&M in the Payette River system (Payette Division of the Boise Project).
- Future O&M in the Malheur River system (Vale Project).
- Future O&M in the Mann Creek system (Mann Creek Project).
- Future O&M in the Burnt River system (Burnt River Project).
- Future O&M in the upper Powder River system (Upper Division of the Baker Project).
- Future O&M in the lower Powder River system (Lower Division of the Baker Project).
- Future provision of salmon flow augmentation from the rental or acquisition of natural flow rights.

- Surveys and studies for Snake River physa in the Snake River below Minidoka Dam.

### **NMFS's Biological Opinion**

The ESA Section 7 consultation regulations require a Federal agency to consult on actions that it proposes to authorize, fund, or carry out that are within its discretionary authority and may adversely affect an ESA-listed species or alter its critical habitat. As a matter of practicality, Reclamation did not differentiate between discretionary and non-discretionary components of its proposed actions.

NMFS developed a “reference operation” to aid its analysis that depicts hydrologic conditions without Reclamation’s upper Snake River basin projects’ storage and diversion operations. Recognizing that the existing Reclamation infra-structure is in the environmental baseline, the reference operation is a theoretical operation used to represent future operation of these baseline facilities and the resulting hydrologic conditions. This reference operation does not reflect a true operational scenario that Reclamation has discretion to implement, and it is not consistent with Reclamation’s obligation to provide for congressionally authorized project uses. NMFS used this reference operation as a reference point to analyze the effects of Reclamation’s proposed actions, by determining fish passage and survival through the Federal facilities downstream from the upper Snake River basin projects under the proposed actions and comparing that with fish passage and survival for the reference operation.

In determining whether the proposed actions are likely to result in the destruction or adverse modification of designated critical habitat, NMFS used two alternative methods: 1) the Environmental Baseline Approach and 2) the Listings Conditions Approach. The Environmental Baseline Approach used as a point of reference the environmental baseline to which the proposed actions’ effects are added. In the Listing Conditions Approach, NMFS used as a point of reference the critical habitat essential feature conditions (also known as primary constituent elements) that occurred at the time the species was listed. In both analyses, NMFS determined whether the proposed actions altered an essential critical habitat feature compared to the environmental baseline or at the time of listing and whether any alteration appreciably diminished the value of critical habitat for survival or recovery. With either approach, the determination for the destruction or adverse modification of critical habitat was influenced by the status of the ESU and the degree to which conditions of the affected essential features met the biological requirements of the species for survival or recovery.

NMFS concluded that Reclamation’s proposed actions were not likely to jeopardize the continued existence of the 13 salmon and steelhead ESUs or adversely modify or destroy critical habitat that is designated for 3 of the ESUs. A summary of its conclusions is contained in Section 8 of the Biological Opinion. The Opinion includes an Incidental Take Statement with Reasonable and Prudent Measures and associated Terms and Conditions to minimize incidental take at Section 10.

Concurrent with the Section 7 ESA consultation, NMFS addressed MSA requirements with respect to effects to EFH for the following species: Chinook salmon, coho salmon, and . NMFS determined that the proposed actions would adversely affect EFH for Columbia River basin Chinook and coho salmon. Accordingly, they provided Conservation Recommendations to avoid, mitigate, or offset the adverse effects identified.

## **FINDINGS AND COMMITMENTS**

Based upon information contained in Reclamation's Biological Assessment, the NMFS March 31, 2005, Biological Opinion and Incidental Take Statement, and other relevant materials considered in the consultation, Reclamation concludes that its proposed actions meet the regulatory requirements of Section 7(a)(2) of the ESA and Section 305(b) of the MSA. The proposed actions are not likely to jeopardize the continued existence of any ESA-listed species or result in the destruction or adverse modification of designated critical habitat. Reclamation concurs with NMFS that implementing the Reasonable and Prudent Measures and associated Terms and Conditions identified in the Incidental Take Statement (Section 10 of the Biological Opinion) will minimize and reduce the level of incidental take associated with the proposed actions. Reclamation also concurs with NMFS's determinations with respect to adverse effects to EFH.

### **Incidental Take Statement**

Reclamation has the necessary authority to implement its proposed actions over the next 30 years as described in its Biological Assessment and referenced supporting documents. Reclamation will implement its proposed actions in accordance with all applicable laws. Reclamation will, consistent with its authorities and funding, implement the Reasonable and Prudent Measures and associated Terms and Conditions to comply with the Incidental Take Statement. Unforeseen power emergencies, safety considerations, emergency/critical maintenance, and natural disasters can occur and may require modifications in operations at Reclamation projects. Reclamation will coordinate any foreseeable deviations in operations with NMFS and other affected parties.

Reclamation's proposed actions include continued commitment to its salmon flow augmentation program with some improvements, including acquiring up to an additional 60,000 acre-feet of natural flow water and efforts to improve the program's reliability.<sup>2</sup> The Incidental Take Statement acknowledges that Reclamation's proposed actions minimize incidental take to listed salmon and steelhead to the extent practical. NMFS

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<sup>2</sup> The Nez Perce Settlement negotiations made it clear that the additional 60,000 acre-feet of natural flow water will be acquired from high-lift pumpers located between Milner Dam and King Hill for lands taken out of crop production. The volume acquired by Reclamation represents the total volume that would have been pumped by high-lift pumpers during the April through October period. Therefore, while 60,000 acre-feet will be provided on an annual basis, the amount of flow augmentation water provided during the April through August flow augmentation period is estimated to be 49,800 acre-feet for a potential total of up to 476,800 acre-feet annually for flow augmentation. This clarification was provided in a February 16, 2005 letter from Jerry Gregg, Snake River Area Manager for Reclamation, to Chris Toole, Acting Assistant Regional Administrator for NMFS.

has included Reasonable and Prudent Measures and associated Terms and Conditions to ensure that Reclamation implements its salmon flow augmentation program as described in its Biological Assessment and supporting documents. Reclamation's intent in implementing the Reasonable and Prudent Measures and associated Terms and Conditions is described here.

#### *New Contracts for Stored Water*

Reclamation will comply with the Section 7(a)(2) ESA regulations for actions taken with respect to contracts for storage water in reservoirs described in the Biological Assessment and resulting Biological Opinion (listed in Table 1 of this document). Reclamation will consult with NMFS before entering into new, renewed or supplemental, contracts for storage water, if Reclamation determines entering into the contract would affect Reclamation's ability to provide salmon flow augmentation water as described in this consultation, or if it determines that listed species or critical habitat may be adversely affected. If Reclamation determines consultation is warranted, it will proceed in conformance with the ESA regulations.

#### *Annual Coordination of the Salmon Flow Augmentation Program*

Reclamation intends to continue to coordinate with the Technical Management Team and Regional Forum when planning and implementing its annual salmon flow augmentation program. Reclamation will provide estimates of anticipated salmon flow augmentation program acquisitions and delivery, and update these estimates as necessary, for use in the development of the annual Federal Columbia River Power System Water Management Plan and in-season management. Reclamation will provide this information through its attendance and participation in Technical Management Team meetings.

#### *Provision of Annual Progress Report*

Reclamation will annually provide a progress report to NMFS by December 31 of each year documenting the volume of water provided in that year's salmon flow augmentation program. The progress report will indicate the sources and volumes of salmon flow augmentation water for that year, as well as a summary of the salmon flow augmentation program results from preceding years.

### **Conservation Recommendations**

NMFS has suggested several discretionary Conservation Recommendations in Section 9.2 of the Biological Opinion that pertain to water quality issues. Reclamation has sufficient authority to implement the 12 proposed actions in the manner described in its Biological Assessment; however, Reclamation has limited authority to conduct work outside of authorized Reclamation projects. Reclamation is generally amenable to implementing the Conservation Recommendations to the extent funding and staffing can be made available within its existing authorities.

Reclamation will use the existing Watershed Advisory Group and Watershed Council networks within the States of Idaho and Oregon to work with the respective Departments

of Environmental Quality, other appropriate designated management agencies, water users, and other interested entities to participate in Total Maximum Daily Load implementation planning in watersheds with a Reclamation presence, such as the Malheur, Owyhee, Boise, Payette, and Weiser Rivers. If other cooperative opportunities arise, Reclamation will evaluate its capability to participate based on authorities and funding. Examples of the type of participation Reclamation may provide include laboratory support, technical advice, and engineering assistance. Reclamation also intends to continue implementing a basin-wide temperature monitoring network in the upper Snake River basin as funding allows. As appropriate, Reclamation will notify NMFS of the status of its activities with respect to these Conservation Recommendations.

### **MSA and EFH Conservation Recommendations**

Section 305(b) (4)(A) of the MSA requires Federal agencies to consult with NMFS on activities that may adversely affect EFH. At Section 11.5 of the Biological Opinion, NMFS concluded that the 12 proposed actions would adversely affect EFH for Columbia River basin Chinook and coho salmon. Reclamation concurs with this determination.

Pursuant to Section 305(b)(4)(A) of the MSA, NMFS provided EFH Conservation Recommendations at Section 11.6, stating that these are identical to the Incidental Take Statement Terms and Conditions found in Section 10 of the Biological Opinion. As described above, Reclamation intends to comply with the Reasonable and Prudent Measures and associated Terms and Conditions; consequently, Reclamation also intends to implement and comply with the EFH Conservation Recommendations.

### **Reinitiation Of Consultation**

Reinitiation of consultation is governed by regulations set forth at 50 CFR § 402.16 and is required based on the following criteria:

- (a) If the amount or extent of taking specified in the incidental take statement is exceeded;
- (b) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) If a new species is listed or critical habitat designated that may be affected by the identified action.

Reclamation will comply with these requirements of the law.

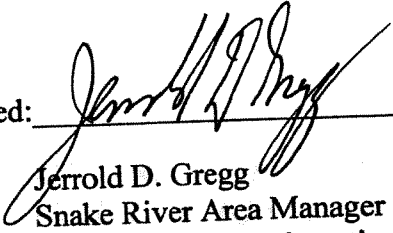
### **APPROVAL**

Reclamation has reviewed the consultation record including Reclamation's Biological Assessment, NMFS's March 31, 2005, Biological Opinion and Incidental Take Statement, and other relevant materials considered in the consultation. Reclamation is



committed to implementing the Reasonable and Prudent Measures and Terms and Conditions contained in the Incidental Take Statement as described above. Implementation of these requirements will also address the Conservation Recommendations for the MSA consultation on EFH. Reclamation has determined that these actions will meet Reclamation's responsibilities under the ESA to avoid jeopardy to 12 listed and 1 proposed-for-listing anadromous fish species and minimize incidental take; will not modify or destroy designated critical habitat; and will also comply with MSA requirements. Reclamation will proceed with implementation of its proposed actions consistent with the findings and commitments identified in the preceding sections.

Signed: \_\_\_\_\_

  
Jerrold D. Gregg  
Snake River Area Manager  
U.S. Bureau of Reclamation

Date: \_\_\_\_\_

